UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

BLUE RIBBON PLUMBING, INC., D/B/A WORKMAN & SONS PLUMBING

Employer

and **Case 9-RC-301758**

PLUMBERS AND STEAMFITTERS, LOCAL UNION 248

Petitioner

HEARING OFFICER'S REPORT ON OBJECTIONS

On September 16, 2022, an agent of Region 9 of the National Labor Relations Board conducted an election to determine whether a unit of employees at Blue Ribbon Plumbing, Inc., d/b/a Workman & Sons Plumbing (Employer) wished to be represented for purposes of collective bargaining by Plumbers and Steamfitters, Local Union 248 (Petitioner). The Petitioner filed three objections as follows:

1. The Employer granted a wage increase to employee(s) the week following the filing of the petition.

2. On August 22, 2022, Office Manager Tammie Hall interrogated employees about their union activity and created the impression of surveillance by telling employees she knew how many employees had signed cards.

3. On August 22, 2022, in the presence of employees, John Workman stated he would shut the business down if employees voted in the Union.

After conducting a hearing and carefully reviewing the evidence as well as the arguments made by the parties, I recommend that the evidence was insufficient to show that the Employer granted wage increases to employees outside of its normal practice or for the purpose of influencing the election. I recommend that the evidence was also insufficient to show that the Employer, by Office Manager Tammie Hall, unlawfully interrogated employees about their union activity or created the impression of surveillance. Finally, I also recommend that the evidence was insufficient to establish that John Workman stated that he would shut the business down if employees voted in the Petitioner in the presence of employees -- indeed the Petitioner concedes that no evidence was presented with regard to this objection. I further recommend that the Petitioner failed to establish that the conduct alleged in its objections to the election, even if established, would have reasonably tended to interfere with employee free choice. Therefore, I recommend that an appropriate certification issue.

After recounting the procedural history, I discuss the applicable burdens of proof and the Employer's operation and discuss each objection in further detail.

PROCEDURAL HISTORY

The Petitioner filed the petition on August 19, 2022. The parties agreed to the terms of an election and the Region approved their agreement on September 7, 2022. The election was held on September 16, 2022. The employees in the following unit voted on whether they wished to be represented by the Petitioner:

> All full-time and regular part-time plumbers and helpers employed by the Employer at its facility located at 35555 Workman Road, Ashland, Kentucky; excluding shop employees, estimators, managers, office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

The ballots were counted, and a Tally of Ballots was provided to the parties. Twelve ballots were cast against representation and no ballots were cast for the Petitioner. There were no challenged ballots.

Objections were timely filed**.** The Regional Director for Region 9 ordered that a hearing be conducted to give the parties an opportunity to present evidence regarding the objections. As the hearing officer designated to conduct the hearing and to recommend to the Regional Director whether the Petitioner's objections are warranted, I heard testimony and received into evidence relevant documents on November 15, 2022. Both the Employer and the Petitioner filed briefs and they have been fully considered.

The Order Directing Hearing in this matter instructs me to resolve the credibility of witnesses testifying at the hearing and to make findings of fact. Unless otherwise specified, my summary of the record evidence is a composite of the testimony of all witnesses, including in particular testimony by witnesses that is consistent with one another, with documentary evidence, or with undisputed evidence, as well as testimony that is uncontested. Credibility resolutions are based on my observations of the testimony and demeanor of witnesses and are more fully discussed within the context of my discussion of the objections.

THE BURDEN OF PROOF AND THE BOARD'S STANDARD FOR SETTING ASIDE ELECTIONS

It is well settled that "[r]epresentation elections are not lightly set aside. There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *Lockheed Martin Skunk Works,* 331 NLRB 852, 854 (2000), quoting *NLRB v. Hood Furniture Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (internal citation omitted). Therefore, "the burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one." *Delta Brands, Inc.*, 344 NLRB 252, 253, (2005), citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989). To prevail, the objecting party must establish facts raising a "reasonable doubt as to the fairness and validity of the election." *Patient Care of Pennsylvania*, 360 NLRB No. 76 (2014), citing *Polymers, Inc*., 174 NLRB 282, 282 (1969), enfd. 414 F.2d 999 (2d Cir. 1969), cert. denied 396 U.S. 1010 (1970). Moreover, to meet its burden the objecting party must show that the conduct in question affected employees in the voting unit. *Avante at*

Boca Raton, 323 NLRB 555, 560 (1997) (overruling employer's objection where no evidence that unit employees knew of the alleged coercive incident).

In determining whether to set aside an election, the Board applies an objective test. The test is whether the conduct of a party has "the tendency to interfere with employees' freedom of choice." *Cambridge Tool & Mfg. Co., Inc.*, 316 NLRB 716 (1995). Thus, under the Board's test the issue is not whether a party's conduct in fact coerced employees, but whether the party's misconduct reasonably tended to interfere with the employees' free and uncoerced choice in the election. *Baja's Place*, 268 NLRB 868 (1984). See also, *Pearson Education, Inc.*, 336 NLRB 979, 983 (2001), citing *Amalgamated Clothing Workers v. NLRB*, 441 F.2d 1027, 1031 (D.C. Cir. 1970).

In determining whether a party's conduct has the tendency to interfere with employee free choice, the Board considers a number of factors: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among employees in the voting unit; (3) the number of employees in the voting unit who were subjected to the misconduct; (4) the proximity of the misconduct to the date of the election; (5) the degree to which the misconduct persists in the minds of employees in the voting unit; (6) the extent of dissemination of the misconduct to employees who were not subjected to the misconduct but who are in the voting unit; (7) the effect (if any) of any misconduct by the non-objecting party to cancel out the effects of the misconduct alleged in the objection; (8) the closeness of the vote; and (9) the degree to which the misconduct can be attributed to the party against whom objections are filed. *Taylor Wharton Division*, 336 NLRB 157, 158 (2001), citing *Avis Rent-a-Car*, 280 NLRB 580, 581 (1986).

Conduct which constitutes unfair labor practice violations may be the basis for invalidating an election, if merit is found in the objections in which they are alleged. As the Board commented in *Playskool Mfg. Co.*, 140 NLRB 1417, 1419 (1963), "conduct of this nature which is violative of Section 8(a)(1) is, a fortiori, conduct which interferes with the exercise of free and untrammeled choice in an election." See also, *IRIS U.S.A., Inc.*, 336 NLRB 1013 (2001); *Diamond Walnut Growers*, 326 NLRB 28 (1998). This is so "because the test of conduct which may interfere with the 'laboratory conditions' for an election is considerably more restrictive than the test of conduct which amounts to interference, restraint, or coercion which violates Section 8(a)(1)." *Dal-Tex Optical Co*., 137 NLRB 1782, 1786–1787 (1962); see also, *Overnite Transportation Co*., 158 NLRB 879, 884 (1966); *Excelsior Underwear, Inc*., 156 NLRB 1236, 1245 (1966).

Even so, an election will not be set aside where, although unfair labor practices have been found, "it is virtually impossible to conclude that they would have affected the results of the election." *Caron International, Inc*., 246 NLRB 1120, 1121 (1979); see also, *Jurys Boston Hotel*, 356 NLRB 927, 928 fn. 8 (2011); *Video Tape Co*., 288 NLRB 646, 646 fn. 2 (1989); *Clark Equipment Co*., 278 NLRB 498, 505 (1986); *Metz Metallurgical Corp*., 270 NLRB 889 (1984); *General Felt Industries*, 269 NLRB 474, 474 fn. 1 (1984). Cf. *Recycle America*, 310 NLRB 629 (1993) (finding, without citing *Caron International*, that unfair labor practices were not sufficient to set aside the election); *Columbus Transit, LLC*, 357 NLRB 1717 (2011) (finding

refusal to bargain that took place one week before election was not likely to deprive intervening union "of a possible campaign platform" and also noting petitioning union's considerable margin of victory).

THE EMPLOYER'S OPERATION

The Employer is a family-owned business which was founded by John Workman's father and is presently owned by his wife. The Employer performs plumbing service and repair work. In the relevant time period between August 19, 2022 and September 16, 2022, the Employer employed about 16 plumbers and helpers.

John Workman has worked for the Employer for 48 years and serves as the Employer's top manager. Mr. Workman normally is responsible for giving raises and issuing discipline to the employees. Jeff Hamm is a supervisor under Workman. Mr. Hamm goes out and checks on the jobs and helps the plumbers and helpers if they run into issues or have questions, but supervision is not typically present on residential jobs. The plumbers and helpers report into the office every workday prior to going out to perform their work. They use tablets to indicate when they are on their way to the jobs and then use the tablets to indicate when they finish a given job and are on their way to the next job.

Tammie Hall has worked for the Employer for 30 years and has been the office manager for about 10 to15 years. Ms. Hall performs payroll duties, customer service and any other office tasks that need to be done. Ms. Hall participates in weekly meetings (usually held on Mondays) with the employees during which she makes suggestions to the employees on various aspects of the work that they could improve upon such as paperwork. The parties stipulated that Ms. Hall is an agent of the Employer pursuant to Section 2(13) of the Act. Another office employee named Sandy Hamm answers the phone for the Employer and schedules jobs for the plumbers and helpers. Ms. Hall and Ms. Hamm assign jobs to the plumbers and helpers on a daily basis based on their estimates of how long the jobs will take.

THE PETITIONER'S OBJECTIONS AND MY RECOMMENDATIONS

Objection 1: ***The Petitioner Failed to Establish that the Employer Improperly Granted Wage Increases to Employees During the Critical Period Outside of its Normal Practice or for Purposes of Influencing the Election.***

Record Evidence

The Petitioner contends, and the record establishes, that the Employer granted pay raises to employees Chris Hale, Michael Gedeon and Barry Runyon during the critical period. Mr. Hale received a $2 per hour raise taking his hourly wage to $14 per hour, Mr. Gedeon received a $3.50 per hour raise bringing his hourly wage to $19 per hour and Mr. Runyon received a $1 per hour raise bringing his wage to $14 per hour.

Tammie Hall testified that the Employer's plumbers and helpers receive pay raises upon obtaining new professional licenses (and showing those licenses to the Employer), upon receiving yearly evaluations, after passing their probationary periods, upon taking on additional responsibilities and for showing good work ethic. John Workman additionally testified that when an employee thinks he deserves a raise he will talk to Workman who will then consider the matter. Similarly, Mr. Workman also testified that he sometimes gives raises to employees whose performance exceeds expectations in an effort to retain them.

Ms. Hall and Mr. Workman testified that Chris Hale received the raise at issue in this matter for taking on additional work responsibilities. Workman testified that another employee, Michael Nix, received a similar pay increase (outside the critical period) for taking on additional work responsibilities, i.e. additional service work. Ms. Hall and Mr. Workman testified that Mr. Hale took on a lead position and began driving one of the Employer's trucks around August 1, 2022. At the hearing of this matter, Ms. Hall readily testified as to the identities of the employees that Hale served as a lead over. Union Organizer Todd Wireman testified that he spoke to Mr. Hale a couple times (during the week of July 13 and the following week) and that on both occasions Mr. Hale was driving one of the Employer's trucks (prior to when Hale received his raise). John Workman testified that employees newly assigned to a truck typically proceed to drive the truck for 4 to 6 weeks while their performance in the new role is evaluated and then receive their raises upon the satisfactory conclusion of this evaluation process. I found Ms. Hall and Mr. Workman to be credible witnesses with regard to their testimony about Mr. Hale's pay increase. Both readily answered questions on both direct and cross examination about the issue in a forthright and truthful manger. I found Mr. Wireman to be a credible witness as well, but Mr. Workman had a plausible explanation (which I credit) as to why Mr. Wireman saw Mr. Hale in one of the Employer's trucks prior to when he received a pay increase for the increased responsibilities attendant to driving an employer truck, i.e. that he was still in the evaluation phase.

Ms. Hall testified that Michael Gedeon received a pay raise for receiving his West Virginia plumber's license, thus bringing him to the Employer's standard $19 per hour rate for an employee with a single plumber's license, but that the raise came late because Mr. Gedeon did not immediately show his license to the Employer due to being off work with his wife who was on maternity leave. The record evidence reflects four other employees (Dalton, Triplett, Whitt and Hamrick) who received raises outside the critical period bringing their hourly pay to $19 for receiving a first plumber's license. [1/] Later in the proceeding, Ms. Hall testified that she could not locate Mr. Gedeon's license in the Employer's files, but that she remembered him turning it in. Mr. Wireman testified (and an exhibit was received) demonstrating that, according to West Virginia's plumbing license website, Mr. Gedeon possesses a plumbing license that

[1/] The Union attempted to demonstrate that the Employer does not have an established policy of granting pay raises upon employees securing new plumbing licenses by relating the dates of pay raises of other employees in the record to the date that they presumably secured their licenses. The testimony was somewhat confused on this point, but I ultimately credit Ms. Hall's explanation that plumber's licenses and their expiration dates are sometimes related to the plumber's birthday rather than strict 1-year anniversaries of the date that the license was acquired. In observing Ms. Hall's demeanor on this point, I founder her credible and find it very implausible that she could have manufactured such an explanation on the spot were it not true.

expires August 2, 2023, (the implication being that he received this license a year prior) although Mr. Wireman admitted that he did not know when Mr. Gedeon presented his license to the Employer. Again, with regard to this issue, I found Ms. Hall to be a credible witness. She provided a forthright, detailed and credible account as to the reason for Mr. Gedeon's raise and why it came when it did. As with the case of Mr. Hale's raise, I also found Mr. Wireman to be a credible witness, but the fact that Mr. Gedeon acquired his West Virginia license on a particular date doesn't demonstrate when he presented it to the Employer (and I credit Ms. Hall's explanation that he presented it late due to his wife being on maternity leave). Finally, it strikes me that the Employer is a small operation, likely not a "well-oiled machine" when it comes to record keeping, and I do not take the fact that Ms. Hall was unable to locate Mr. Gedeon's license at the time of the hearing of this matter as evidence that the Employer never actually received it or was concealing it for some reason.

Ms. Hall testified that Barry Runyon was given a raise on September 9 after asking for one a month or so earlier (the Employer's pay periods run 2 weeks prior to the date paychecks are issued). Ms. Hall testified that Mr. Runyon's raise was not tied to a new license, evaluation, etc. Mr. Workman testified that Mr. Runyon had pled his case for a raise, noting that he was driving all the way from eastern Kentucky for work. Workman testified that he responded to Runyon's plea by telling him that he would give him a raise if Runyon maintained his then current work performance for 30 days. Again, I found Ms. Hall and Mr. Workman's testimony to be credible and forthright on this point. Mr. Hall and Mr. Workman readily answered questions on both direct and cross examination with regard to Mr. Runyon and all of the pay raise related issues. Further, I find nothing suspicious about the notion that a small, family-owned employer such as the one at issue herein would not have rigid rules about when pay raises are granted and may sometimes grant small increases to employees on a case-by-case basis in an effort to retain them. I note that Mr. Runyon's raise is consistent with Mr. Workman's testimony that he grants raises to well-performing workers in an effort to retain them.

Board Law

It is well settled that the grant of a benefit during the critical period may be objectionable. See, e.g., *SBM Management Services*, 362 NLRB No. 144 (2015). The inquiry in analyzing grant-of-benefit issues is to determine whether granting the benefit would tend unlawfully to influence the outcome of the election. The Board examines factors including: (1) the size of the benefit conferred in relation to the stated purpose for granting it; (2) the number of employees receiving it; (3) how employees reasonably would view the purpose of the benefit; and (4) the timing of the benefit. *B & D Plastics*, 302 NLRB 245 (1991); see also, *Ameraglass Co*., 323 NLRB 701 (1997). The Employer may rebut the inference that benefits granted during the critical period are coercive by providing a credible explanation, other than the pending election, for the timing of the grant or announcement of benefits. *United Airlines Services Corp.*, 290 NLRB 954 (1988) (citing *Uarco, Inc.*, 216 NLRB 1, 2 (1974); *Singer Co.*, 199 NLRB 1195 (1972)). The Employer's duty, in deciding whether to grant benefits, is "to decide that question precisely as it would if the union were not on the scene." *R. Dakin & Co.*, 284 NLRB 98 (1987) (quoting *Reds Express*, 268 NLRB 1154, 1155 (1984)); see also, *Niblock Excavating, Inc.*, 337 NLRB 53 (2001); *Network Ambulance Services*, 329 NLRB 1, 2 (1999); *Waste Management of*

Palm Beach, 329 NLRB 198 (1999). The Employer can satisfy its burden by showing the grant is consistent with past practice or company policy. *American Sunroof Corp.*, 248 NLRB 748 (1980); see also *Mercy Hospital Mercy Southwest Hospital*, 338 NLRB 545 (2002); *Onan Corp.*, 338 NLRB 913 (2003).

Recommendation

Although the Employer granted pay raises to three employees during the critical period, I recommend that the Employer has met its burden of demonstrating that it granted those benefits just as it would have in the absence of the election. In this regard, as noted above, I credit the testimony of Ms. Hall and Ms. Workman that Mr. Hale received his pay increase in the ordinary course of business after demonstrating his aptitude at serving as a lead and driving one of the Employer's trucks. I note that this raise is consistent with a practice of granting raises to employees who take on additional responsibilities as established by the pay raise granted to Nix outside of the critical period. Also, as discussed above, I credited the testimony of Ms. Hall and Mr. Workman that Mr. Gedeon received a pay increase to the standard rate for a plumber holding one license after he acquired and showed his West Virginia plumber's license to the Employer (a process delayed due to Mr. Gedeon being off work with a new baby). I note that this appears to be consistent with a well-established practice of paying $19 per hour to plumbers with a single license. Finally, I credited the testimony of Mr. Workman that he granted a pay raise to Mr. Runyon pursuant to an earlier agreement between the two men after Mr. Runyon pled his case for such an increase due to the distance he had to drive to get to work. Although, Mr. Runyon's pay increase arguably may have been more discretionary than those granted to Mr. Hale and Mr. Gedeon, I note that even if I were to find that the raise was not pursuant to the Employer's ordinary practice (which I do not), I would find that the grant of a $1 per hour pay raise to a single employee would not reasonably tend to influence the results of the election. Indeed, even if the pay raises to Mr. Hale and Mr. Gedeon were assumed, *arguendo*, to be outside the Employer's ordinary practice, I would not find that these modest pay increases given to three employees would tend to unlawfully influence the outcome of the election – particularly given that the election was unanimously decided. [2]/ Accordingly, I recommend that Objection 1 be overruled.

Objection 2: ***The Petitioner Failed to Establish that on August 22, 2022, Office Manager Tammie Hall Interrogated Employees about their Union Activity and Created the Impression of Surveillance by Telling Employees she Knew how many Employees had Signed Cards***

Record Evidence

Ms. Hall testified that on Monday, August 22, 2022, the Employer's regular weekly meeting was cancelled by Mr. Workman and that she was in her office with three employees, i.e. Austin Hamrick, Steve Hicks and a third whom Ms. Hall could not recall. Ms. Hall testified that she asked the men if anyone had signed a union card or if anyone knew anything about the

[2]/ Contrast with *ManorCare Health Servs.*, 362 NLRB 644 (2015), where the entire voting unit was granted a pay raise.

Union. Ms. Hall testified that the men said no and that was the end of the interaction. Ms. Hall denied that she told the men that she knew a certain number of them had signed union authorization cards.

The Petitioner's attorney proceeded to play a recording for the parties at the hearing of this matter. Union Organizer Todd Wireman testified that employee Austin Hamrick provided the recording to him. When the recording was played, a female voice could be heard saying that "eight of you" signed up for the Union. A male voice then stated that this wasn't correct. The female then told the male that he previously told her he signed the paper and then called back to inform the Union that he wasn't interested, while the male stated that he didn't, rather he missed a phone call and called the Union back. The female voice went on to state that the Union would take dues in addition to taxes that are already withheld from paychecks – a statement with which the male employee appeared to indicate that he agreed.

When Ms. Hall was confronted during cross examination with the question of whether her voice was the female voice in the recording, Ms. Hall responded that she was not sure whether it was her voice, that she wouldn't recognize a recorded version of her own voice, and that she had no recollection of the conversation reflected on the recording. Ms. Hall testified that the male voice on the recording sounded like Chris Hale. John Workman testified that the female voice on the recording sounded like Ms. Hall's to him (although there was no suggestion that Mr. Workman was present for the conversation reflected on the recording).

Not only was Mr. Hamrick not called as a witness in this matter, not a single witness who was purported to have been present when the recording was made testified other than Ms. Hall -- and she denied remembering such a conversation. Any knowledge that Mr. Wireman had about the conversation in the recording necessarily would have been based on hearsay statements made by Mr. Hamrick. As such, I rejected the recording as an exhibit. Although, I appreciate Mr. Workman's candor in testifying that that the voice on the recording sounded like Ms. Hall's to him, I do not find such, standing alone, sufficient to overcome my concerns about admitting the recording into evidence. I am likewise not satisfied by Mr. Wireman's non-expert testimony that recordings made on the device in question are incapable of being altered.

Board Law

Not all questioning of employees about their union sentiments violates the Act. In determining whether a purported interrogation violates Section 8(a)(1) of the Act, the Board looks at whether under all the circumstances the questioning reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Emery Worldwide*, 309 NLRB 185,186 (1992). In considering this issue, the totality of the circumstances under which the questioning occurred is analyzed, including such factors as whether the employee questioned was an open union supporter, the nature of the questioning, the identity of the questioner, and the place where the questioning took place. *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985). Similarly, the Board's test for determining whether an employer has created an unlawful impression of surveillance is whether under all the relevant circumstances reasonable employees would assume from the statement in question that their union or protected activities had been

placed under surveillance. *Stevens Creek Chrysler Jeep Dodge*, 353 NLRB 1294, 1295-1296 (2009); *Bridgestone Firestone South Carolina*, 350 NLRB 526, 527 (2007).

Recommendation

Ms. Hall admitted that she asked three employees from the voting unit if any of them signed union cards or if any of them knew anything about the Union. No testimony was presented regarding whether any of the employees were open union adherents. Indeed, were I to have admitted the recording into evidence this would raise even more questions about whether the employees were open adherents as the recording suggests that the female and the male had at least one prior conversation about the Union and possibly a potential attempt to rescind a card or something of that nature. Further I find nothing particularly intimidating about a casual conversation among the office manager and the employees in the Employer's office – a location where the plumbers and helpers reported daily prior to going off to perform their work assignments. Additionally, although Ms. Hall is an admitted agent of the Employer, I do not find that statements made by the office manager, as opposed to Mr. Workman (who decided disciplinary matters and conducted evaluations) would have been particularly intimidating without something more. By Ms. Hall's testimony no impression of surveillance was given and no threats or intimidation accompanied her brief inquiry to the men about the Petitioner.

As to the statements heard in the recording, I am left with Ms. Hall's testimony that she did not recall making the statements attributed to her verses the recording which I deemed to be inadmissible. Even were I to have admitted the recording into evidence, I would not find the statement that eight of the employees had signed for the Petitioner, standing in isolation, to reasonably imply that employee union activities were under surveillance. Such a statement could just as easily represent a misunderstanding as to the number of employees that would have been required to demonstrate a showing of interest sufficient to warrant the further processing of a representation petition. Also, as I noted above, the exchange between the female and male in the recording suggests that there had been some prior discussion between the two that would likely shed additional light on the recorded conversation and whether the female's statements in the recorded conversation could be construed as coercive.

Even had I found that Ms. Hall made the statements attributed to her and had I found that they arguably violated the Act, I would still recommend that such would constitute insufficient reason to warrant the overturning of the election. In this regard, I find it virtually impossible to conclude that they would have affected the results of the election. There was only a single, very brief interaction involving only three employees. The alleged misconduct occurred far in time from the election – almost a month prior. There was no evidence that the alleged misconduct persisted in the minds of the bargaining unit and I find that, given the brevity of the conversation and the mildness of the statements attributed to Ms. Hall, it would not be the kind of conversation likely to linger in the minds of the employees. There was no evidence presented as to whether the alleged statements attributed to Ms. Hall were disseminated among the voting unit, but again, I find that given the brevity and mildness of the statements, dissemination would be unlikely. No evidence was presented of any effort to cancel out the alleged misconduct. The vote was unanimously against representation, and I find it unlikely that the statements attributed

to the office manager and made so far removed in time from the election, would have changed this dramatically lopsided vote. Finally, as discussed above, I have found that the alleged misconduct would have been attributable to the Employer since I have concluded that Ms. Hall is an admitted agent of the Employer. In weighing all of these factors, I find that they weigh heavily against re-running the election. For the foregoing reasons, I find that the alleged statements made by Ms. Hall do not raise a reasonable doubt as to the fairness and validity of the election and recommend that the second objection be overruled.

Objection 3: ***The Petitioner Failed to Establish that on August 22, 2022 in the Presence of Employees, John Workman Stated he would Shut the Business Down if Employees Voted in the Union.***

Record Evidence

John Workman testified credibly and unequivocally that he did not state that he would shut the business down rather than go union and the Petitioner concedes that no evidence was presented to the contrary.

Recommendation

In view of the foregoing, I recommend that the third objection be overruled.

CONCLUSION

Based on the foregoing, I recommend that the Petitioner's objections be overruled in their entirety and that an appropriate certification issue.

APPEAL PROCEDURE

Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 9 by **December 23, 2022.** A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Pursuant to Section 102.5 of the Board's Rules and Regulations, exceptions must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlrb.gov), unless the party filing exceptions does not have access to the means for filing electronically or filing electronically would impose an undue burden. Exceptions filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission.

Pursuant to Sections 102.111 – 102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by close of business 4:30 p.m. on the

due date. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date.

Within 5 business days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated: December 9, 2022

/s/ Jonathan D. Duffey

Jonathan D. Duffey, Hearing Officer
Region 9, National Labor Relations Board
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CERTIFICATE OF SERVICE

December 9, 2022

I hereby certify that I served the attached Hearing Officer's Report on Objections on all parties by electronic mail at the following addresses:

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